IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RONNIE J. CARTER,	)	
	)	
Plaintiff,	)	No. 2009 C 2685
	)	
v.	)	Chicago, Illinois
	)	
VILLAGE OF CARPENTERSVILLE, et al.,	)	June 23, 2009
	)	
Defendants.	)	9:35 a.m.

TRANSCRIPT OF PROCEEDINGS - MOTION/STATUS
BEFORE THE HONORABLE ELAINE E. BUCKLO

APPEARANCES:

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PREPARED BY COMPUTER

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THE CLERK: 2009 C 2685, Carter versus Village of Carpentersville; for status and motion.

MS. CRUZ: Good morning, Your Honor.

THE COURT: Okay, good morning.

MS. CRUZ: Marion Cruz for plaintiff.

THE COURT: Good morning.

MR. DOLEZAL: Good morning. Scott Dolezal for the defendants.

THE COURT: Good morning.

Okay, your proposed schedule is fine.

I guess we'd better deal with this protective order issue. What is this thing about the media? I wasn't quite sure what it was that one of you wanted to exclude and one of you wanted to include. Is it just confidential documents or all communication?

MR. DOLEZAL: It's just the confidential matter, the things that have been marked confidential that are covered by the protective order.

THE COURT: So what is the problem with that paragraph?

MS. CRUZ: Well, Your Honor, as stated, it doesn't say confidential, it just says sharing information. That's the first quarrel we have.

THE COURT: Well, just put in confidential. Of course, in a way, it actually, I can see why she would be concerned about that because the confidential information is necessarily restricted anyway, so that couldn't go to the media. And if you're saying she can't, they can't talk to the media, I have no basis upon which to issue a gag order, which is really what you're talking about.

MR. DOLEZAL: And if that's the only objection, I can certainly clarify that.

THE COURT: Well, if there's anything, what is it that would need to be added to what is already restricted on the other paragraphs? Wouldn't that necessarily restrict it from being disclosed to the media?

MR. DOLEZAL: I think it probably would be if it was something that the client requested to be specific in that manner.

THE COURT: Well, if you want to add media in there, but make it very clear that it's only the same confidential information.

Okay, and the other one had to do with providing confidential documents I guess to witnesses. Potential witnesses who might not be deposed? I can see why you might object to that.

MS. CRUZ: Your Honor, we were speaking before we were called up to the bench here, and we would not have a problem with using the same language that's used in paragraph 7(f) and changing it to "witnesses who have personal knowledge of relevant facts or are consulted or interviewed by attorneys of record in preparation for this case," because the, what's happening is with (e) stated as it is, witnesses that are not employees of the Village, who are not former employees or not parties can't be shown certain information prior to their deposition, which is different and separate from what, you know, the employees.

THE COURT: I don't actually have it in front of me. Is this language okay with you?

MR. DOLEZAL: No, Your Honor, frankly, because --

THE COURT: Well, then I need to try to get this in front of me. All I have are my notes.

MR. DOLEZAL: If it helps, Your Honor, we are talking about paragraph 7(e) and (f).

THE COURT: Yes. I'm actually looking at 7. That's why I don't see why you need a separate paragraph about media. Oh, 7(e).

MR. DOLEZAL: And plaintiffs, I guess the problem we would have with the proposal by plaintiff is that there would be no control over or I guess no disclosure, no way for the other party to know what's being disclosed to whom if that witness is not eventually deposed.

THE COURT: Well, I understand that. But, you know, the other thing is this is all hypothetical right now because I don't know what documents you're talking about.

MS. CRUZ: Your Honor --

THE COURT: If it's personnel records, I don't see why they would be being shown to some potential witness. But maybe you people should just leave it open and see what's confidential. There probably are some depending upon what you want, but maybe you are not going to have any issue.

MS. CRUZ: And, Your Honor, if I could just raise something else.

We were not intending to disclose any employment records or medical records or anything like that. But the language of this proposed protective order is that they have language that says any other documents of a nonpublic nature that may be subject to discovery but should not be generally available to the public.

The problem is that we've already received -- which is broad. We don't know what that is at this point. But we've already received the criminal trial from the Kane County State's Attorney, and at this point it would be difficult to determine, to distinguish between what we've already gotten and what they later say, well, this is confidential, and we've shared that with obviously our clients, and at this point it just, it's not clear to us what this information is going to apply to. That's why we have a quarrel and objection to paragraph No. (e).

And also the media, because the media would have an interest in information that's not confidential that concerns the circumstances that are relevant to this case.

THE COURT: Well, I guess without knowing what you're going to mark as confidential, it is difficult to decide how broad it should be.

MR. DOLEZAL: Right, and I do understand that. But I do think that counsel's concern is we are only talking about documents that may be produced by the defendants, and surely they have some way to keep track of records that are produced by the defendants versus records received through subpoena. I'm not talking about keeping Kane County's records separate. I'm not sure that I could even do that on my own or unilaterally.

THE COURT: Well, why don't we talk then about what you are talking about.

MR. DOLEZAL: We are talking about I think any personnel records. You know, I haven't seen all the police reports, but there may be some things in the police reports. Videos that may be received from the police department, things that would not be part of the criminal file. Things of that nature, things that are typically I think in probably every police case that I've ever worked on that we do seek to keep confidential, addresses of the officers, their personal information, things of that nature.

MS. CRUZ: And as to that, Your Honor, we would never disclose addresses or personal information of the officers.

But as to police reports and videos, that's information we can receive from a FOIA request, and maybe it would be redacted, but nonetheless it's public information. So that's our problem with that broadening of the category of confidential information.

MR. DOLEZAL: Well, I think the plaintiff can come in and challenge it if, on a case-by-case basis if we mark something that she feels is improperly marked.

THE COURT: All right. Well, take out the media part, and I will leave this as it is, but subject to, frankly, my vacating most of it if you start claiming things as confidential that you don't have a pretty good basis for.

MR. DOLEZAL: Right.

THE COURT: And at any rate that you can come in and say you don't think this should be confidential and that you should be subject to those restrictions on anything. But so there's both good faith on your part that's going to be required, and it's still subject to my looking at it and saying it isn't confidential, and anything that I think ought to be reasonably in the public record I will probably say that if a challenge is made. Obviously not their addresses, not their Social Security numbers, you know. But there shouldn't be an awful lot, it seems to me, that would really be confidential.

But with those caveats, we'll do that. Why don't you people come back in, oh, how about, if you're not on vacation, how about August 26th for a status?

MS. CRUZ: Thank you, Your Honor.

MR. DOLEZAL: That would be fine.

I think the other thing that we talked about is to, I was able to get some settlement authority to extend to plaintiff today. I don't think we will probably do it based on where we are at right now, but --

THE COURT: Do you want to come in and talk about it?

MR. DOLEZAL: We can talk about a settlement conference, yes.

THE COURT: Now? I don't mean literally now, but at the beginning of discovery as opposed to later on?

MR. DOLEZAL: I think that that would be helpful. My clients couldn't get more authority right now because they knead to take it up in a council meeting, so any time after July 8th when they can consider that.

THE COURT: Okay. How about July 16th? I think the trial we'll have the week before will be done. About 2 o'clock?

MR. DOLEZAL: That would work.

THE COURT: Is that okay?

MS. CRUZ: That would be great. Thank you.

THE COURT: All right. See you then. Thank you.

MS. CRUZ: And will that be before you, Your Honor?

THE COURT: Yes.

THE CLERK: We have a settlement conference at 2 o'clock.

THE COURT: I must have thought it was a good time for settlement conference. Well, I don't want to do two in a day. In that case, how about 2 o'clock on July 22? Would that work?

MS. CRUZ: That should work.

MR. DOLEZAL: Yes.

THE COURT: Okay. All right, thank you.

MS. CRUZ: Thank you so much.

MR. DOLEZAL: Thank you, Your Honor.

(End of proceedings.)

C E R T I F I C A T E

I, Michael P. Snyder, do hereby certify that the forgoing is a complete true, and accurate transcript of the proceedings had in the above-entitled case before the Honorable ELAINE E. BUCKLO, one of the judges of said Court, at Chicago, Illinois, on June 23, 2009.

/S/ Michael P. Snyder June 30, 2009

Official Court Reporter Date
United States District Court
Northern District of Illinois
Eastern Division